

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

COMCAST CORPORATION

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File No. EB-06-IH-3723
NAL/Acct. No. 200732080035
FRN: 00063229247

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 21, 2007

Released: September 21, 2007

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that Comcast Corporation (“Comcast”), which operates an affiliated regional cable network, CN8, is apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000) for violating Section 76.1615 of the Commission’s rules.¹ This rule generally requires cable operators engaged in origination cablecasting to make sponsorship identification announcements when presenting matter in return for money, service, or other valuable consideration. We find that Comcast cablecast portions of a video news release (“VNR”) produced on behalf of “Nelson’s Rescue Sleep” without also airing required sponsorship identification announcements.²

II. BACKGROUND

2. Section 76.1615(a) of the Commission’s rules states:

When a cable television system operator engaged in origination cablecasting presents any matter for which money, service, or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such cable television system operator, the cable television system operator, at the time of the cablecast, shall announce that such matter is sponsored, paid for, or furnished, either in whole or in part, and by whom or on whose behalf such consideration was supplied: *Provided, however,* that “service or other valuable consideration” shall not include any service or property furnished without or at a nominal charge for use on, or in connection with, a cablecast unless it is so furnished in consideration for an identification of any person, product,

¹ See 47 C.F.R. § 76.1615.

² CN8 supplies programming to Comcast cable systems, and Comcast does not contest that the programming at issue here was carried on its cable systems.

service, trademark, or brand name beyond an identification reasonably related to the use of such service or property on the broadcast.³

3. On November 11, 2006, the Center for Media and Democracy (“CMD”) and Free Press jointly filed a complaint against Comcast alleging that, on September 21, 2006, CN8 transmitted a VNR produced by D.S. Simon Productions for Nelson’s Rescue Sleep without providing the sponsorship identification required by Section 76.1615.⁴

4. On April 26, 2007, the Enforcement Bureau (“Bureau”) issued a letter of inquiry⁵ to Comcast to determine, among other things, whether CN8 transmitted the VNR as alleged, and if so, whether Comcast disclosed the source of the VNR in its cablecast.

5. Comcast responded to the letter of inquiry on July 2, 2007.⁶ Comcast admits that on September 21, 2006, its affiliated cable network, CN8, aired portions of a VNR produced on behalf of “Nelson’s Rescue Sleep” without any sponsorship identification.⁷ Comcast argues as a threshold matter that Section 76.1615 appears to be invalid because the statutory provision underlying that rule, Section 317 of the Communications Act, as amended (the “Act”), applies only to broadcasting and not to cablecasting.⁸ Comcast states that although it does not believe that the Commission has the authority to apply Section 317 in the context of cable programming or to enforce Section 76.1615 of the Commission’s rules, it nonetheless responded to the inquiries set forth in the LOI.⁹ Comcast contends that even assuming the validity of the rule, CN8’s use of the VNR material did not violate Section 76.1615.¹⁰ Specifically, Comcast argues that no sponsorship identification is required unless consideration is received or promised as part of an express or implied agreement in exchange for use of

³ 47 C.F.R. § 76.1615. The rule also contains additional requirements for cable operators under certain circumstances.

⁴ See Complaint of Timothy Karr, Campaign Director, Free Press, and Diane Farsetta, Senior Researcher, Center for Media and Democracy, dated November 14, 2006 (File No. EB-06-IH-5669) (“*Complaint*”). The *Complaint* also cited four other cablecasts in which CN8 had allegedly failed to provide the required sponsorship identification. This *NAL* addresses the *Complaint* only with respect to the September 21, 2006, cablecast on CN8.

⁵ See Letter from Hillary S. DeNigro, Chief, Investigations & Hearings Division, Enforcement Bureau, to Comcast Corporation, dated April 26, 2007 (“*LOP*”).

⁶ See Letter from Megan Anne Stull, Willkie, Farr & Gallagher LLP, Counsel for Comcast Corporation, dated July 2, 2007 (“*Response*”).

⁷ See *id.* at 4.

⁸ See *Response* at 1-2. The Commission has previously concluded that the statutory sponsorship identification requirements also apply to origination programming by cable operators. See *Commission Reminds Broadcast Licensees, Cable Operators and Others of Requirements Applicable to Video News Releases*, Public Notice, 20 FCC Rcd 8593, 8594, n.6 (2005). We will not revisit that conclusion here.

⁹ See *id.* at 3.

¹⁰ See *id.*

the VNR. Comcast further states that CN8 and its employees did not receive and were not promised any consideration from any source in exchange for cablecasting the VNR material.¹¹

III. DISCUSSION

6. Under Section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a monetary forfeiture penalty.¹² To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.¹³ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.¹⁴ We conclude under this standard that Comcast is apparently liable for a forfeiture for its apparent willful violation of Section 76.1615 of the Commission's rules.

7. Section 76.1615(a) of the Commission's rules makes clear that when a cable television system operator engages in origination cablecasting, it must identify the sponsor of a material whenever that operator accepts "money, service or other valuable consideration" to air that material. The phrase "service or other valuable consideration," however, does not include "service or property furnished without charge or at a nominal charge for use on, or in connection with a broadcast," *unless* such service or property is "furnished in consideration for an identification in a broadcast of any person, product, service, trademark or brand name beyond an identification which is reasonably related to the use of such service or property on the broadcast."¹⁵ Thus, while the proviso to the rule exempts service or property furnished without charge from the duty to announce the sponsor or source of such material, the exception to that proviso reinstates the duty when there is too much focus on a product or brand name in the programming.

8. CN8's cablecast featuring "Nelson's Rescue Sleep" was part of a daily segment on "Art Fennell Reports" focusing on consumer issues.¹⁶ On September 21, 2006, the consumer-issues segment

¹¹ See *id.* at 3-4, 5, 7. In addition, Comcast notes that it paid CNN Newsource a licensing fee for access to the VNR material. See *id.* at 5.

¹² See 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1); see also 47 U.S.C. § 503(b)(1)(D) (forfeitures for violation of 14 U.S.C. § 1464). Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. See 47 U.S.C. § 312(f)(1). The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the Section 503(b) context. See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) ("*Southern California Broadcasting Co.*"). The Commission may also assess a forfeiture for violations that are merely repeated, and not willful. See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359 (2001) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator's repeated signal leakage). "Repeated" merely means that the act was committed or omitted more than once, or lasts more than one day. *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶9.

¹³ See 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

¹⁴ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) (forfeiture paid).

¹⁵ 47 C.F.R. §76.1615(a).

¹⁶ See *Response* at 4-5.

concerned non-prescription sleep aids. The segment featured only “Nelson’s Rescue Sleep,” a commercial, natural sleep-aid product, and included portions of a VNR produced by D.S. Simon Productions on behalf of “Nelson’s Rescue Sleep.”¹⁷ The VNR material used in this consumer-issues segment contains extensive images and mentions of the product and includes the statement that “If you are one of the estimated 70 million Americans who have trouble sleeping - Rescue Sleep may be what you’re looking for.”¹⁸ We do not believe that this type of promotional material, furnished by a product manufacturer, can or should be considered within the scope of the proviso, which is directed to material that contains only fleeting or transient references to products or brand names.¹⁹ We conclude that even though CN8 received this material at no charge, it falls within the exception specifically set forth in the rule and that a sponsorship announcement was thus required. We therefore find that Comcast violated Section 76.1615(a) of the Commission’s rules by willfully airing the VNR material at issue without proper sponsorship identification.²⁰

9. The Commission’s *Forfeiture Policy Statement* sets a base forfeiture amount of \$4,000 for sponsorship identification violations.²¹ After considering the record and all of the factors contained in Section 503(b)(2)(D) of the Act, 47 U.S.C. § 503(b)(2)(D), and the *Forfeiture Policy Statement*, we believe a \$4,000 forfeiture is appropriate in this case, which represents the base amount for the cablecast transmitted by CN8 on September 21, 2006.

IV. ORDERING CLAUSES

10. **ACCORDINGLY, IT IS ORDERED THAT**, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission’s rules, Comcast Corporation is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of Four Thousand Dollars (\$4,000) for willfully violating Section 76.1615 of the Commission’s rules.

11. **IT IS FURTHER ORDERED**, pursuant to Section 1.80 of the Commission’s rules, that within thirty days of the release of this Notice, Comcast Corporation **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight

¹⁷ See *id.* at 5 & Declaration of Janet Zappala.

¹⁸ *Response* at 6 and Exhibit 1. We note that the VNR material used on the segment was edited, but that the editing did not alter the product and brand-name focus of the material.

¹⁹ See *Applicability of Sponsorship Identification Rules*, Public Notice, 40 FCC 141, 148, illustrative interpretation 26(b) (1963) (“1963 Public Notice”).

²⁰ We note that there may be other bases for requiring sponsorship identification but we do not reach these in this *Notice of Apparent Liability*.

²¹ See *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission’s Rules*, 12 FCC Rcd 17087, 17114 (1997), *recons. denied* 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b).

mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

13. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, to the Attention of: Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4-C330, and must include the NAL/Acct. No. referenced above.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. Requests for payment of the full amount of the NAL under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²²

16. **IT IS FURTHER ORDERED** that a copy of this Notice shall be sent, by Certified Mail/Return Receipt Requested, to Peter H. Feinberg, Associate General Counsel, Comcast Corporation, 1500 Market Street, Philadelphia, Pennsylvania, 19102, and to its counsel, James L. Casserly, Esquire, and Megan Anne Stull, Esquire, Willkie Farr and Gallagher LLP, 1875 K Street, N.W., Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau

²² See 47 C.F.R. § 1.1914.